

October 16, 2018

Ms. Nicole Reedy
Morris & Ritchie Associates, Inc.
1220-C East Joppa Road, Suite 505
Towson, MD 21286

Re: Courthouse Square Apartments
Forest Conservation Variance
Tracking #05-18-2767

Dear Ms. Reedy:

A request for a variance from the Baltimore County Code Article 33 Environmental Protection and Sustainability, Title 6 Forest Conservation was originally received by this Department on July 19, 2018. The request seeks a variance to base afforestation requirements on the 0.8-acre limit of disturbance (LOD) rather than the entire 30.9-acre site in order to complete improvements to the apartment complex parking lot. The request also includes the removal of two specimen trees: a 33-inch DBH northern red oak and a 31.5-inch DBH sugar maple, both in fair condition. There are 63 other specimen trees on the property that will not be impacted by the parking lot improvements. Parking lot improvements will include the addition of three new parking lots and four impervious surface additions to existing parking rows.

The Director of the Department of Environmental Protection and Sustainability (EPS) may grant a special variance to the Forest Conservation Law in accordance with criteria outlined in Section 33-6-116(d)(1) of the Code. There are six (6) criteria listed in Subsection 33-6-116(d) and (e) that shall be used to evaluate the variance request. One (1) of the criteria under Subsection 33-6-116(d) must be met, and all three (3) of the criteria under Subsection 33-6-116(e) must be met, in order to approve the variance.

The first criterion (Subsection 33-6-116(d)(1) of the Code) requires the petitioner show the land in question cannot yield a reasonable return if the requirement from which the special variance is requested is imposed and will deprive the petitioner of all beneficial use of the property. The applicant is seeking to improve an existing apartment complex facility. As the property has already long been functioning as an apartment complex, full application of the law would not deprive the applicant of all beneficial use of the property. Consequently, we find that this criterion has not been met.

The second criterion (Subsection 33-6-116 (d) (2) of the Code) requires that the petitioner show that his/her plight is due to unique circumstances and not the general

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conditions of the neighborhood. The petitioner's plight is due to unique budgetary circumstances not associated with general conditions of the neighborhood. The petitioner's plight is also due to the locations of the two specimen trees relative to the areas of proposed parking lot improvements rather than general conditions of the neighborhood. Therefore, we find that the second criterion has been met.

The third criterion (Subsection 33-6-116(d) (3) of the Code) requires that the petitioner show that the special variance requested will not alter the essential character of the neighborhood. The surrounding neighborhood consists of a residential area of medium-density single-family homes, commercial properties, and a college campus. The site is already functioning as an apartment complex and this use will not change as a result of this variance. As such, granting this variance for the proposed parking lot improvements will not alter the essential character of this neighborhood. Therefore, this criterion has been met.

The fourth criterion (Subsection 33-6-116(e) (1) of the Code) requires that the granting of the special variance will not adversely affect water quality. The project will not impact any wetlands, streams, or associated buffer areas. Additionally, no forest will be impacted by the proposed project. Erosion and sediment control measures will be properly installed prior to construction. As a result, this Department finds that the proposed variance will not adversely affect water quality. Consequently, this criterion has been met.

The fifth criterion (Subsection 33-6-116(e) (2) of the Code) requires that the special variance request does not arise from a condition or circumstance that is the result of actions taken by the petitioner. The petitioner has not taken any actions resulting in conditions or circumstances requiring this special variance prior to its request. Therefore, this criterion has been met.

The sixth criterion (Subsection 33-6-116(e)(3) of the Code) requires that the Director of EPS find that the special variance, as granted, would be consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code. Although two specimen trees are to be removed, no forest will be impacted, and the 63 other specimen trees onsite will remain undisturbed. Afforestation will be addressed by the purchase of credits in a forest retention bank or through payment of a fee-in-lieu. Therefore, we find that this variance is consistent with the spirit and intent of Article 33, Title 6 of the Baltimore County Code and that this criterion has been met.

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Based on our review, this Department finds that all required variance criteria have been met. Therefore, the requested variance is hereby approved in accordance with Section 33-6-116 of the Baltimore County Code contingent on the following conditions:

1. Mitigation for the removal of the 33-inch DBH northern red oak and the 31.5-inch DBH sugar maple shall be addressed by a payment of \$1,838.00 by January 16, 2019 or prior to EPS approval of any permit, whichever comes first. Checks shall be made payable to Baltimore County.
2. A final forest conservation plan (FCP) shall be approved by EPS staff prior to grading plan approval or permit issuance, whichever comes first.
3. The 0.1-acre afforestation requirement resulting from this variance shall be addressed in accordance with the approved FCP prior to grading permit issuance.
4. The following note must be on all subsequent plans for this development project:

“A variance was granted on October 16, 2018 by Baltimore County Dept. of Environmental Protection & Sustainability to allow afforestation requirements to be based on the 0.8-acre limit of disturbance for parking lot improvements rather than the entire 30.9-acre property as well as to remove two specimen trees. Conditions were placed on this variance to ensure that the spirit and intent of the Forest Conservation Law were met including payment of a fee-in-lieu of mitigation for specimen tree removal.”
5. This variance approval does not exempt future development activities or further removal of specimen trees at this site from compliance with Baltimore County’s Forest Conservation Law.

It is the intent of this Department to approve this variance subject to the above conditions. Any changes to site layout may require submittal of revised plans and a new variance request.

Please have the party responsible for meeting the conditions of this variance sign the statement on the following page and return a signed copy of this letter to this Department within 21 calendar days. Failure to return a signed copy may render this approval null and void, or may result in delays in the processing of plans for this project.

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If you have any questions regarding this correspondence, please call Ms. Libby Errickson at (410) 887-3980.

Sincerely yours,

David V. Lykens
Deputy Director

DVL/lbe

- c. Mr. Richard Berkowitz, CR Courthouse Square Holdings, LLC
Ms. Marian Honeczy, Maryland Dept. of Natural Resources

I/we agree to the above conditions to bring my/our property into compliance with Baltimore County's Forest Conservation Law.

Owner's Signature

Date

Printed Name